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The Right To Be Forgotten: Origins, Legal Regulation, Precedents, Implications

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1. Concept and Origins. The right to be forgotten is a legal concept allowing individuals control over their online identities by demanding that Internet search engines remove certain results [1, p. 1]. This concept, pioneered in 1890, was introduced to protect an individual's sphere of confidentiality, in particular the right to privacy which was understood as the "right to be let alone" [2]. One of the most credible theories is that the right to be forgotten derived from 'le droit à l'oubli' — a legal guarantee first recognized in French law and allowing a convicted criminal, who has served his time and been rehabilitated, to object to the publication of the facts of his conviction and incarceration. But it has been decided in Europe that, with the expansion of data processing, this right needs to be extended as well, and thus, everyone should have a droit d'oubli for incorrect or outdated information [2].

2. Legal Regulation. In the **EU** the right to be forgotten has been regulated by the 1995 **Data Protection Directive** yet, however in April 2016, the European Council and the European Parliament adopted Regulation 2016/679, known as the "**General Data Protection Regulation**," which will take effect on May 25, 2018. Its Article 17 establishes a "right to erasure" (right to be forgotten) and states that individuals have the right to require data controllers to erase information if the data subject objects or withdraws consent, or if the information is no longer necessary for its original purpose. The provision also requires that data controllers inform other controllers of the request for erasure. Exceptions from this right include the

situations when processing of information is necessary for freedom of expression, the public interest, or for historical, scientific, and statistical purposes [3].

There is a similar law in the **Russian Federation**. It is known as Federal Law No. 264-FZ of July 13, 2015 which came into force in January 2016. The law gives Russian citizens the right to request search engines to remove links to information about them which is in violation of the Russian law, inaccurate, out of date, or irrelevant because of subsequent events or actions taken by the citizens, including information related to a public figure or information of the public interest [4].

In the **USA** the evolution and introduction of the right to be forgotten is impeded by the well-respected content of the First Amendment to the Constitution, establishing freedom of speech. Nevertheless, the state of California has adopted the equivalent of Data Protection Law, colloquially called the online eraser law, California's S. B. (Senate Bill) 568, which took effect in January 2015. It does not include the notion of the right to be forgotten, but it requires social media and other websites to remove content posted by minors upon the minors' request [5].

3. Precedents. The right to be forgotten in its contemporary, digital form first took shape in 2014 owing to the Court of Justice of the European Union case *Google Spain SL, Google Inc. v Agencia Española de Protección de Datos, Mario Costeja González* (2014) [6]. A Spanish man, Mario Costeja González, complained about some pages originally published in a Spanish newspaper (and later republished on the Internet), which announced a government-ordered real estate auction following attachment proceedings to recover social security debts that he owed. He argued that the newspaper and Google should remove the information about the auction, because they infringed his right to privacy, as the information was not relevant to the current situation. The court ruled that the paper could leave the information on its website, but Google had to remove the links to those pages from its index due to the fact that the newspaper got the protection of being "media" under European data protection law (which offers various protections and exemptions for journalistic work). And Google is considered a "data controller", so it has special obligations in the EU.

4. Possible Implications. It is essential to highlight that nowadays, following the aforementioned precedent, the right to be forgotten legislation is on the rise. However, in the EU this right was based on the values of respect for freedom of expression and the rule of law, and in other countries, not as democratized as the EU, such principles are not always given priority, which can lead to the scenarios of mass censorship and the reduction of media freedom. Therefore, the media development community should engage in deliberations, raise awareness of how the right to be forgotten can contravene the freedom of press, and ensure that information does not become inaccessible.

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